84-786

CASE NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

STATE OF FLORIDA,

Petitioner,

vs.

MORGAN JAMISON, JR.,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, FOURTH DISTRICT

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58 pp

QUESTION PRESENTED

MUST AN OFFICER CONDUCTING THE FRISK FOR A FIREARM PERMITTED BY TERRY v. OHIO, 392 U.S. 1 (1968), LIMIT THE FRISK TO A PAT-DOWN OF THE SUSPECT'S OUTER CLOTHING EVEN THOUGH CONDUCTING A PAT-DOWN WOULD RISK THE OFFICER'S SAFETY, OR MAY THE REASONABLENESS OF A FRISK BE DETERMINED FROM THE RELEVANT CIRCUMSTANCES?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

OPINION BELOW

The opinion of the District Court of Appeal of the State of Florida, Fourth District, was filed on September 19, 1984. It is not yet reported, but it has been reproduced in its entirety in the appendix to this petition. Jamison v. State, ___ So.2d ___, 4DCA No. 83-18 (Op. filed 9/19/84).

GROUND UPON WHICH JURISDICTION IS INVOKED

The opinion of the District Court of Appeal of the State of Florida, Fourth District, was filed on September 19, 1984. It reversed the Respondent's conviction for possession of methaqualone and the three-year sentence imposed for the

conviction, on the ground that the trial court should have granted the Respondent's Motion to Suppress the evidence obtained from a stop and frisk. The District Court of Appeal was the court of last resort in this case, for the Florida Supreme Court's jurisdiction is limited and the instant case did not fall within one of the categories reviewable in the state supreme court. See, Fla. Const., Art. V, §4(b)(i) and §3(b). Thus, the opinion of the Fourth District Court of Appeal is the decision of the highest court in which decision could be had in this case. See, Williams v. Florida, 399 U.S. 78, 80, n. 5 (1970).

This petition is timely filed

within sixty days of the entry of the decision of the Fourth District Court of Appeal. The certiorari jurisdiction of this Court is invoked pursuant to 28 U.S.C., §1257(3). [An order tolling and extending the state speedy trial period pending the disposition of the instant petition has been entered by the trial court.]

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment IV, United States Constitution, provides, in pertinent part:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . .

Article I, Section 12, Florida Constitution provides:

> SECTION 12. Searches and seizures.--The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, and against the unreasonable interception of private communications by any means, shall not be violated. No warrant shall be issued except upon probable cause, supported by affidavit, particularly describing the place or places to be searched, the person or persons, thing or things to be seized, the communication to be intercepted, and the nature of evidence to be obtained. This right shall be construed in conformity with the 4th Amendment to the United States Constitution, as interpreted by the United States Supreme Court. Articles or information obtained in violation of this right shall not be admissible in evidence if such articles or information

would be inadmissible under decisions of the United States Supreme Court construing the 4th Amendment to the United States Constitution.

Section 901.151, Florida Statutes, provides:

> 901.151 Stop and Frisk Law.--
> (1) This section may be known and cited as the "Florida Stop and Frisk Law."
> (2) Whenever any law enforcement officer of this state encounters any person under circumstances which reasonably indicate that such person has committed, is committing, or is about to commit a violation of the criminal laws of this state or the criminal ordinances of any municipality or county, he may temporarily detain such person for the purpose of ascertaining the identity of the person temporarily detained and the circumstances surrounding his presence abroad which led the officer to believe that he had committed, was committing, or was about

to commit a criminal offense.

(3) No person shall be temporarily detained under the provisions of subsection (2) longer than is reasonably necessary to effect the purposes of that subsection. Such temporary detention shall not extend beyond the place where it was first effected or the immediate vicinity thereof.

(4) If at any time after the onset of the temporary detention authorized by subsection (2), probable cause for arrest of person shall appear, the person shall be arrested. If, after an inquiry into the circumstances which prompted the temporary detention, no probable cause for the arrest of the person shall appear, he shall be released.

(5) Whenever any law enforcement officer authorized to detain temporarily any person under the provisions of subsection (2) has probable cause to believe that any person whom he has temporarily detained, or is about to detain temporarily, is armed with a dangerous

> weapon and therefore offers a threat to the safety of the officer or any other person, he may search such person so temporarily detained only to the extent necessary to disclose, and for the purpose of disclosing, the presence of such weapon. If such a search discloses such a weapon or any evidence of a criminal offense it may be seized.
>
> (6) No evidence seized by a law enforcement officer in any search under this section shall be admissible against any person in any court of this state or political subdivision thereof unless the search which disclosed its existence was authorized by and conducted in compliance with the provisions of subsection (2)(5).

STATEMENT OF THE CASE

The opinion of the court below sets forth the material facts, as stated by the parties in their

appellate briefs, and the opinion is reproduced in the appendix. To summarize, Deputy Sheriff Gregory Younkin received a radio dispatch that a citizen, Marion Craft, had called in a complaint. The complaint was that a black male wearing long blue pants and no shirt was at the south end of Jensen Beach with a firearm.

Deputy Younkin arrived at the beach within four minutes after he received the dispatch. He observed several black males, but as the Respondent was the only one wearing long blue trousers, he was the only person who matched the description. The deputy asked the Respondent to lift his pant leg up, rather than

conduct a pat-down frisk, because the presence of the other persons concerned him since he was alone and he wanted to keep an eye on everyone. After the Respondent lifted his pant leg, Deputy Younkin observed a bulge in his sock. He thought the bulge was caused by a small caliber firearm, because in the past he had encountered people who carried weapons in their socks. Deputy Younkin asked the Respondent to remove the bulge, which he did, revealing a brown paper bag. The Respondent was then directed to empty its contents on a nearby table, which he did. It was then revealed that the bag contained the methaqualone tablets which were the basis for the prosecution in

the trial court. Up until the time the bag was emptied, however, Deputy Younkin suspected the presence of and was looking for a firearm.

The Fourth District Court of Appeal held that the initial stop of the Respondent was proper and the officer was entitled to conduct a frisk. However, the court concluded the officer exceeded the scope of the frisk permitted by Fla. Stat. 901.151(5), Florida's stop and frisk law, because he did not pat down the Respondent's outer clothing but instead directed him to lift his pant leg, remove the bulge in the sock and empty the bag which caused the bulge. This decision is a construction of the Fourth Amendment to the United States

Constitution because Fla. Stat. 901.151 was enacted in 1969 to implement the guidelines for a permissible Fourth Amendment stop and frisk enumerated in Terry v. Ohio, 392 U.S. 1 (1968). See, §901.151, Fla. Stats. Anno. Historical Note. Moreover, under Article I, Section 12 of the Florida Constitution, the Florida courts must determine search and seizure issues "in conformity with the 4th Amendment to the United States Constitution, as interpreted by the United States Supreme Court." The Fourth Amendment determination by the District Court of Appeal gives this Court jurisdiction to review the judgment on certiorari.

REASONS FOR GRANTING THE WRIT

The issue presented by this case is an important one which raises a substantial federal question: Must an officer conducting a frisk for a firearm pat down the suspect's clothing where to do so would risk his personal safety or may the manner of the frisk be determined from the relevant circumstances? Relying upon Florida's stop and frisk law, Fla. Stat. 901.151(5), which was taken directly from the guidelines announced in Terry v. Ohio, 392 U.S. 1 (1968)[1], the

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[1] §901.151, Fla. Stats. Anno., Historical Note:
--Legislative Reference Bureau--1969:
Senate Bill 125, Chapter 69-73, reiterates the circumstances under which a law enforcement officer may

state appellate court held a frisk must not extend beyond a pat-down of the suspect's outer clothing and Deputy Younkin conducted an illegal search when he directed the Respondent to lift his pant leg, remove the bulge in his sock, and dump the contents of the bag that was causing the bulge. The Petitioner maintains that Terry v. Ohio, 392 U.S. 1 (1968) does not require the result reached by the court below.

While it is true that in Terry v. Ohio, supra, the frisk that

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footnote 1 continued:

reasonably temporarily detain a person suspected of breaking the law or about to break the law as enunciated in the case of Terry v. Ohio, 88 S.Ct. 1868, 392 U.S. 1, 20 L.Ed.2d 889, and is given the short title "Florida Stop and Frisk Law."

occurred was a pat-down of the suspect's outer clothing, the court did not require that a pat-down be the exclusive means for conducting a frisk for weapons. In fact, the court left the door open for that issue to be developed further in future cases:

> We need not develop at length in this case, however, the limitations which the Fourth Amendment places upon a protective seizure and search for weapons. These limitations will have to be developed in the concrete factual circumstances of individual cases . . . The sole justification of the search in the present situation is the protection of the police officer and others nearby, and it must therefore be confined in scope to an intrusion reasonably designed to discover guns, knives, clubs, or other

> hidden instruments for the assault of the police officer.

Terry v. Ohio, supra, 392 U.S. at 29.

The State submits the instant case provides an opportunity for this Court to amplify the above-cited portion of its opinion in Terry v. Ohio, supra, for there is no question that Deputy Younkin's actions were grounded on a well founded suspicion that the Respondent was armed, and up until the point when the Respondent dumped the contents of the bag, which revealed it contained illicit controlled substances, his suspicion was not allayed. As one of the concurring judges, Judge Hersey, noted in the court below:

In our case the search was occasioned by an individual's description of appellant which included the fact that he had a gun. This was neither an anonymous tip nor one from a confidential informant. It was a complaint by a citizen who gave her name and who supplied details of a crime in progress. Thus the officer, upon recognizing appellant from the description, had every reason to be apprehensive about the presence of a firearm. In addition, several individuals were standing around during the interrogation and the officer, again being concerned for his safety (not being certain who might have the weapon) wanted to keep an eye on everyone. Assuredly he could have 'frisked' the brown paper bag. The question is: was he constitutionally mandated only to feel the bag rather than request that appellant dump out the contents. In my view, a rule that requires the making of such fine distinctions in the presence of possible

> imminent peril asks too much of law enforcement personnel.

Nevertheless, Judge Hersey concurred in the court's decision, being of the opinion, as was Judge Glickstein, who also authored a separate concurring opinion, that the directive to empty the bag was a search of a closed container, contrary to Robbins v. California, 453 U.S. 420 (1981), and United States v. Ross, 456 U.S. 798 (1982). These two decisions are inapposite to the instant case, for they involve probable cause searches under the automobile exception to the Fourth Amendment's requirement of a warrant, and not a limited frisk for weapons under Terry v. Ohio, supra. In the instant case,

the State maintains the frisk conducted by the officer was reasonable under the circumstances which made a pat-down impractical. The whole purpose of Terry v. Ohio, supra, which was reaffirmed in Adams v. Williams, 407 U.S. 143 (1972), is to permit an officer to make a limited intrusion to ensure his own safety. Deputy Younkin's directives in this case imposed a minimal intrusion on the Respondent's privacy and served to protect the deputy's safety. Accordingly, it is the State's position Deputy Younkin did not exceed the scope of the frisk permitted under Terry v. Ohio, supra.

The State seeks this Court's review in the instant case to

clarify this area of the law not simply because it believes the Fourth District Court of Appeal's opinion is erroneous, but because the issue presented here is an important one. It is at least as worthy of consideration as was the good faith exception issue analyzed in United States v. Leon, ___ U.S. ___, 82 L.Ed.2d 677 (1984) and Massachusetts v. Sheppard, ___ U.S. ___, 82 L.Ed.2d 737 (1984). Surely a stop and frisk occurs with at least the same, and probably more, frequency as do searches conducted in reliance on invalid warrants, the subject which framed the issue in Leon and Sheppard. Law enforcement agencies must look

to this Court to set the parameters of a frisk, as the question was reserved in Terry.

Finally, Petitioner anticipates Respondent may argue that the state appellate court, by citing to Section 901.151, Fla. Stat., did not decide a federal question. If this argument is made, it is without merit. As the Petitioner has already noted, the Florida stop and frisk law was enacted in response to Terry v. Ohio. Under the Florida Constitution, state courts must be bound by decisions of this Court in resolving search and seizure claims. Moreover, the two concurring judges both cited decisions of this Court as authority

for their disposition of the case. Therefore, the instant case raises a substantial Fourth Amendment question which is appropriate for certiorari review.

CONCLUSION

Wherefore, based on the foregoing reasons and authorities, the Petitioner respectfully requests that this Court grant its Petition for Writ of Certiorari to the District Court of Appeal of the State of Florida, Fourth District.

Respectfully submitted,

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APPENDIX

IN THE DISTRICT COURT OF APPEAL OF
THE STATE OF FLORIDA
FOURTH DISTRICT JULY TERM 1984

MORGAN JAMISON, JR.,	)	
	)	
Appellant,	)	
	)	
v.	)	CASE NO.
	)	83-18
STATE OF FLORIDA,	)	
	)	
Appellee.	)	
	)	

Opinion filed September 19, 1984.

Appeal from the Circuit Court for Martin County; C. Pfeiffer Trowbridge, Judge.

Richard L. Jorandby, Public Defender, Cathleen Brady, Assistant Public Defender, West Palm Beach, for appellant.

Jim Smith, Attorney General, Tallahassee, and Joy B. Shearer, Assistant Attorney General, West Palm Beach, for appellee.

WALDEN, J.

Jamison was charged with possession of methaqualone. He pled

nolo contendere reserving the right to appeal the denial of his Motion to Suppress. He was adjudicated guilty and sentenced to three years imprisonment. He appeals. We reverse and remand.

The State accepts Jamison's version of the facts as follows:

> Deputy Sheriff Gregory Younkin received a radio dispatch that a Marion Craft called in a complaint. The complaint was that a black male wearing long blue pants, no shirt, and a short afro was at the south end of Jensen Beach with a firearm. Deputy Younkin testified that he never talked to Marion Craft, and that he knew nothing about her reliability.
>
> Deputy Younkin responded to the beach four minutes after the dispatch. He observed the appellant, a black male, inside the pavilion area. The appellant

had no shirt and he was wearing long blue pants. There were a number of black males in the area. Initially, Deputy Younkin asked all the people inside the pavilion if anyone had a firearm. He then asked the appellant to life his pants leg up. Deputy Younkin testified that if the appellant had refused to lift his pants leg up, he would have frisked him. After appellant lifted his pants leg up, Deputy Younkin noticed a bulge in appellant's left sock. He had not observed this bulge before. The appellant was asked to remove a brown paper bag which he was ordered to dump upon a table by Deputy Younkin. Deputy Younkin testified that he observed about 50 white pills.

On cross-examination, Deputy Younkin acknowledged that he did not see anything about the appellant that would lead him to believe that the appellant had a weapon prior to asking him to lift up his pants leg.

The State adds:

> None of the persons at the Jensen Beach pavilion matched the description given in the dispatch except the appellant, as he was the only one wearing long trousers. Deputy Younkin testified he thought the bulge in the appellant's sock was caused by a small caliber firearm because in the past he has encountered people who have carried weapons in their socks.
>
> Deputy Younkin directed the appellant to raise his pants leg rather than do a pat-down because the presence of the other persons in the area concerned him and he wanted to keep an eye on everyone.

In our opinion Jamison was properly subjected to a stop and frisk pursuant to Section 901.151, Florida Statutes (1981). The facts were insufficient to constitute probable cause for an arrest at the time he was stopped.

However, we are concerned with

the provisions of Section 901.151(5) (1981) as applied to this case. It provides:

> (5) Whenever any law enforcement officer authorized to detain temporarily any person under the provisions of subsection (2) of this section has probable cause to believe that any person whom he has temporarily detained, or is about to detain temporarily, is armed with a dangerous weapon and therefore offers a threat to the safety of the officer or any other person, he may search such person so temporarily detained only to the extent necessary to disclose, and for the purpose of disclosing, the presence of such weapon. If such a search discloses such a weapon or any evidence of a criminal offense it may be seized.

Here the officer took these particular actions which constituted an illegal search: (1) He directed Jamison to lift up his pants leg;

(2) He directed Jamison to take out what was in his sock when he observed a bulge in the sock; and (3) He directed Jamison to dump the contents of the brown paper bag that Jamison had removed from his sock. We hold that these actions exceeded the limitations found in Section 901.151, Florida Statutes (1981). It was not necessary for the officer to go to the extent he did in order to determine if Jamison had a weapon.

The law is clear that a protective frisk or "pat-down" must be limited to that which is necessary for the discovery of weapons. It may not extend beyond a pat-down of the suspect's outer clothing unless the pat-down or other circumstances lead the officer to believe that the

suspect has a weapon. Meeks v. State, 356 So.2d 45 (Fla. 2d DCA 1978). See also Baldwin v. State, 418 So.2d 1219 (Fla. 2d DCA 1982); Fraley v. State, 374 So.2d 1122 (Fla. 4th DCA 1979).

Here the officer did not pat-down Jamison. He testified that he did not conduct a pat-down because he was concerned for his safety and wanted to keep an eye on others in the area. Accepting this excuse in toto for his failure to pat-down Jamison's outer clothing, we still feel that the officer could have satisfactorily protected his safety and still honored the defendant's rights by simply having Jamison hand the paper bag to the officer or place it on the ground and walk

a distance away, whereupon the officer could have patted-down or felt the bag without opening it. Had he done so he would have felt pellets or pills and no weapon. Thus, there would have been absolutely no justification for proceeding or searching further into the contents of the bag.

We primarily base our reversal upon J.R.H. v. State, 428 So.2d 786 (Fla. 2d DCA 1983) which involved the search of a satchel under circumstances similar to those at hand. There, the Court held:

> At most, Truesdale could have asked appellant if the bag contained a dangerous weapon or could have conducted a pat-down search of the bag. He was not entitled to inquire further than that

> into the nature of its contents or to conduct a full-scale search of the bag.

428 So.2d at 787-788.

Reversed and Remanded.

HERSEY and GLICKSTEIN, JJ., concur specially with opinions.

HERSEY, J., concurring specially.

In J.R.H. v. State, 428 So.2d 786 (Fla. 2d DCA 1983) relied upon by the majority, (1) the search resulted from an officer's recollection that there had been recent burglaries in the area and (2) the search was carried out in the presence of only two juveniles. There was no hint of a weapon and no other obvious threat to the officer's safety. In our case the search was occasioned by an

individual's description of appellant which included the fact that he had a gun. This was neither an anonymous tip nor one from a confidential informant. It was a complaint by a citizen who gave her name and who supplied details of a crime in progress. Thus the officer, upon recognizing appellant from the description, had every reason to be apprehensive about the presence of a firearm. In addition, several individuals were standing around during the interrogation and the officer, again being concerned for his safety (not being certain who might have the weapon) wanted to keep an eye on everyone. Assuredly he could have "frisked" the brown paper bag. The question

is: was he constitutionally mandated only to feel the bag rather than to request that appellant dump out the contents. In my view, a rule that requires the making of such fine distinctions in the presence of possible imminent peril asks too much of law enforcement personnel. Nonetheless, such cases as Robbins v. California, 453 U.S. 420, 101 S.Ct. 2841, 69 L.Ed.2d 744 (1981) and United States v. Ross, 456 U.S. 798, 102 S.Ct. 2157, 72 L.Ed.2d 572 (1982) appear to mandate the result we reach with respect to this "container search." I therefore reluctantly concur.

GLICKSTEIN, J., concurring specially.

I concur with Judge Walden's

well-reasoned opinion and wish only to comment upon the law vis a vis the enforcement of law, while avoiding repetition of whatever expressions I may have earlier made on this subject in State v. Drowne, 436 So.2d 916, 921 (Fla. 4th DCA), pet. for rev. den., 441 So.2d 633 (Fla. 1983). Square one, to me, is the recent expression of the general rule -- not the exceptions thereto -- as verbalized by the United States Supreme Court in United States v. Ross, ___ U.S. ___, 102 S.Ct. 2157, 2166, ___ L.Ed.2d ___ (1982), wherein it commented upon the court's earlier opinion in United States v. Chadwick, 433 U.S. 1, 97 S.Ct. 2476, 53 L.Ed.2d 538 (1977):

> In ruling that the warrantless search of the footlocker was unjustified, the Court reaffirmed the general principle that closed packages and containers may not be searched without a warrant. Cf. Ex parte Jackson, 96 U.S. 727, 24 L.Ed. 877; United States v. Van Leeuwen, 397 U.S. 249, 90 S.Ct. 1029, 25 L.Ed.2d 282. In sum, the Court in Chadwick declined to extend the rationale of the "automobile exception" to permit a warrantless search of any movable container found in a public place.

(Footnote omitted.)

The court further said in discussing Robbins v. California, 453 U.S. 420, 101 S.Ct. 2841, 59 L.Ed.2d 644 (1982), which was decided without a majority opinion:

> One point on which the Court was in virtually unanimous agreement in Robbins was that a

constitutional distinction between "worthy" and "unworthy" containers would be improper. Even though such a distinction perhaps could evolve in a series of cases in which paper bags, locked trunks, lunch buckets, and orange crates were placed on one side of the line or the other, the central purpose of the Fourth Amendment forecloses such a distinction. For just as the most frail cottage in the kingdom is absolutely entitled to the same guarantees of privacy as the most majestic mansion, so also may a traveler who carries a toothbrush and a few articles of clothing in a paper bag or knotted scarf claim an equal right to conceal his possessions from official inspection as the sophisticated executive with the locked attache case.

As Justice Stewart stated in Robbins, the Fourth Amendment provides protection to the owner of every container that conceals its contends from plain view. 453 U.S., at 427, 101 S.Ct.

> at 2846 (plurality opinion). But the protection afforded by the Amendment varies in different settings. The luggage carried by a traveler entering the country may be searched at random by a customs officer; the luggage may be searched no matter how great the traveler's desire to conceal the contents may be. A container carried at the time of arrest often may be searched without a warrant and even without any specific suspicion concerning its contents. A container that may conceal the object of a search authorized by a warrant may be opened immediately; the individual's interest in privacy must give way to the magistrate's official determination of probable cause.

Id. at 2171 (footnotes omitted).

Finally, it said in rejecting the precise holding in Robbins:

> We reaffirm the basic rule of Fourth Amendment jurisprudence stated by Justice Stewart for a unanimous Court in Mincey v.

Arizona, 437 U.S. 385, 390, 98 S.Ct. 2408, 2412, 57 L.Ed.2d 290:

> "The Fourth Amendment proscribes all unreasonable searches and seizures, and it is a cardinal principle that 'searches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment--subject only to a few specifically established and well-delineated exceptions.' Katz v. United States, 389 U.S. 347, 357 [88 S.Ct. 507, 514, 19 L.Ed.2d 576] (footnotes omitted)."

Id. at 2172.

The following remarks of Chief Justice Burger in Chadwick are worth repeating here:

> In this Court the Government again contends that the Fourth Amendment Warrant Clause protects only interests traditionally identified with the home.[2]

Recalling the colonial writs of assistance, which were often executed in searches of private dwellings, the Government claims that the Warrant Clause was adopted primarily, if not exclusively, in response to unjustified intrusions into private homes on the authority of general warrants. The Government argues there is no evidence that the Framers of the Fourth Amendment intended to disturb the established practice of permitting warrantless searches outside the home, or to modify the initial clause of the Fourth Amendment by making warrantless searches supported by probable cause per se unreasonable.

Drawing on its reading of history, the Government argues that only homes, offices, and private communications implicate interests which lie at the core of the Fourth Amendment. Accordingly, it is only in these contexts that the determination whether a search or seizure

is reasonable should turn on whether a warrant has been obtained. In all other situations, the Government contends, less significant privacy values are at stake, and the reasonableness of a government intrusion should depend solely on whether there is probable cause to believe evidence of criminal conduct is present. Where personal effects are lawfully seized outside the home on probable cause, the Government would thus regard searches without a warrant as not "unreasonable."

We do not agree that the Warrant Clause protects only dwellings and other specifically designated locales. As we have noted before, the Fourth Amendment "protects people, not places," Katz v. United States, 389 U.S. 347, 351, 88 S.Ct. 507, 511, 19 L.Ed.2d 576 (1967); more particularly, it protects people from unreasonable government intrusions into their legitimate expectations of privacy. In this case,

the Warrant Clause makes a significant contribution to that protection. The question, then, is whether a warrantless search in these circumstances was unreasonable.

It cannot be doubted that the Fourth Amendment's commands grew in large measure out of the colonists' experience with the writs of assistance and their memories of the general warrants formerly in use in England. These writs, which were issued on executive rather than judicial authority, granted sweeping power to customs officials and other agents of the King to search at large for smuggled goods. Though the authority to search granted by the writs was not limited to the home, searches conducted pursuant to them often were carried out in private residences. See generally Stanford v. Texas, 379 U.S. 476, 481-485, 85 S.Ct. 506, 509-511, 13 L.Ed.2d 431 (1965); Marcus v. Search Warrant, 367 U.S. 717, 724-729, 81 S.Ct. 1708, 1712-1714, 6 L.Ed.2d 1127 (1961);

Frank v. Maryland, 359 U.S. 360, 79 S.Ct. 804, 3 L.Ed.2d 877 (1959).

Although the searches and seizures which deeply concerned the colonists, and which were foremost in the minds of the Framers, were those involving invasions of the home, it would be a mistake to conclude, as the Government contends, that the Warrant Clause was therefore intended to guard only against intrusions into the home. First, the Warrant Clause does not in terms distinguish between searches conducted in private homes and other searches. There is also a strong historical connection between the Warrant Clause and the initial clause of the Fourth Amendment, which draws no distinctions among "persons, houses, papers, and effects" in safeguarding against unreasonable searches and seizures. See United States v. Rabinowitz, 339 U.S. 56, 68, 70 S.Ct. 430, 445, 94 L.Ed. 653 (1950) (Frankfurter, J., dissenting).

Moreover, if there is little evidence that the Framers

intended the Warrant Clause to operate outside the home, there is no evidence at all that they intended to exclude from protection of the Clause all searches occurring outside the home. The absence of a contemporary outcry against warrantless searches in public places was because, aside from searches incident to arrest, such warrantless searches were not a large issue in colonial America. Thus, silence in the historical record tells us little about the Framers' attitude toward application of the Warrant Clause to the search of respondents' footlocker. What we do know is that the Framers were men who focused on the wrongs of that day but who intended the Fourth Amendment to safeguard fundamental values which would far outlast the specific abuses which gave it birth.

Moreover, in this area we do not write on a clean slate. Our fundamental inquiry in considering Fourth Amendment issues is whether or not a search

or seizure is reasonable under all the circumstances. Cooper v. California, 386 U.S. 58, 87 S.Ct. 788, 17 L.Ed.2d 730 (1967). The judicial warrant has a significant role to play in that it provides the detached scrutiny of a neutral magistrate, which is a more reliable safeguard against improper searches than the hurried judgment of a law enforcement officer "engaged in the often competitive enterprise of ferreting out crime." Johnson v. United States, 333 U.S. 10, 14, 68 S.Ct. 367, 369, 92 L.Ed. 436 (1948). Once a lawful search has begun, it is also far more likely that it will not exceed proper bounds when it is done pursuant to a judicial authorization "particularly describing the place to be searched and the persons or things to be seized." Further, a warrant assures the individual whose property is searched or seized of the lawful authority of the executing officer, his need to search, and the limits of his power to search. Camara v.

Municipal Court, 387 U.S. 523, 532, 87 S.Ct. 1727, 1732, 18 L.Ed.2d 930 (1967).

Just as the Fourth Amendment "protects people, not places," the protections a judicial warrant offers against erroneous governmental intrusions are effective whether applied in or out of the home. Accordingly, we have held warrantless searches unreasonable, and therefore unconstitutional, in a variety of settings. A century ago, Mr. Justice Field, speaking for the Court, included within the reach of the Warrant Clause printed matter traveling through the mails within the United States:

> "Letters and sealed packages of this kind in the mail are as fully guarded from examination and inspection, except as to their outward form and weight, as if they were retained by the parties forwarding them in their own domiciles. The constitutional guaranty of the right

> of the people to be secure in their papers against unreasonable searches and seizures extends to their papers, thus closed against inspection, wherever they may be. Whilst in the mail, they can only be opened and examined under like warrant, issued upon similar oath or affirmation, particularly describing the thing to be seized, as is required when papers are subjected to search in one's own household." Ex parte Jackson, 96 U.S. 727, 733, 24 L.Ed. 877 (1878).

We reaffirmed Jackson in United States v. Van Leeuwen, 397 U.S. 249, 90 S.Ct. 1029, 25 L.Ed.2d 282 (1970), where a search warrant was obtained to open two packages which, on mailing, the sender had declared contained only coins. Judicial warrants have been required for other searches conducted outside the home. E.g., Katz v. United States, 389 U.S. 347, 88 S.Ct. 507,

19 L.Ed.2d 576 (1967) (electronic interception of conversation in public telephone booth); Coolidge v. New Hampshire, 403 U.S. 443, 91 S.Ct. 2022, 29 L.Ed.2d 564 (1971) (automobile on private premises); Preston v. United States, 376 U.S. 364, 84 S.Ct. 881, 11 L.Ed.2d 777 (1964) (automobile in custody); United States v. Jeffers, 342 U.S. 48, 72 S.Ct. 93, 96 L.Ed. 59 (1951) (hotel room); G. M. Leasing Corp. v. United States, 429 U.S. 338, 97 S.Ct. 619, 50 L.Ed.2d 530 (1968) (office); Mancusi v. DeForte, 392 U.S. 364, 88 S.Ct. 2120, 20 L.Ed.2d 1154 (1968) (office). These cases illustrate the applicability of the Warrant Clause beyond the narrow limits suggested by the Government. They also reflect the settled constitutional principle, discussed earlier, that a fundamental purpose of the Fourth Amendment is to safeguard individuals from unreasonable government invasions of legitimate privacy interests, and not simply those interests found inside the four walls

of the home. Wolf v. Colorado, 338 U.S. 25, 27, 69 S.Ct. 1359, 1361, 93 L.Ed. 1782 (1949).

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2. The Fourth Amendment provides:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonsable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

433 U.S. at ___, 97 S.Ct. at 2481, 53 L.Ed.2d at ___ (all other footnotes omitted).

Turning back to the present case, Judge Walden has cut through the chaff by his to-the-point

opinion. Had the law enforcement officer been consciously aware of the law it was his duty to enforce, the improper, warrantless search would not have occurred in the absence of probable cause for the arrest. I view "law enforcement" as two buzz words, meaning enforcement of the law not only as it is but also as it should be unequivocally announced by the judiciary, clearly taught by law enforcement advisers, and plainly understood by law enforcement officers.

ORIGINAL

No. 84-736

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1984

****

STATE OF FLORIDA,

Petitioner,

vs.

MORGAN JAMISON, JR.,

Respondent.

****

Petition For Writ of Certiorari From the District Court of Appeal of Florida for the Fourth District

****

Respondent's Brief in Opposition

****

Respectfully submitted,

RICHARD L. JORANDBY
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15th Judicial Circuit of Florida
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RICHARD B. GREENE
Assistant Public Defender

ROBERT E. ADLER
Assistant Public Defender

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Statutes:

Florida Statutes

STATEMENT OF THE CASE

Respondent makes the following addition to Petitioner's Statement of the Case:

The Information filed in this case alleges that the offense occurred on June 10, 1982. Appendix I.

REASON FOR DENYING THE WRIT

THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL WAS BASED SOLELY ON STATE GROUNDS.

The decision of the Fourth District Court of Appeal was based solely on state grounds, specifically, §901.151(5), Fla. Stat. (1981) which provides:

> (5) Whenever any law enforcement officer authorized to detain temporarily any person under the provisions of subsection (2) of this section has probable cause to believe that any person whom he has temporarily detained, or is about to detain temporarily, is armed with a dangerous weapon and therefore offers a threat to the safety of the officer or any other person, he may search such person so temporarily detained only to the extent necessary to disclose, and for the purpose of disclosing, the presence of such weapon. If such a search discloses such a weapon or any evidence of a criminal offense it may be seized.
>
> (emphasis added).

The Fourth District Court of Appeal held that the actions of the law enforcement officer exceeded the limitations of §901.151(5), Fla. Stat. (1981). The court noted that its decision was primarily based on J.R.H. v. State, 428 So.2d 786 (Fla.2d DCA 1983) which involved an illegal search of a satchel

under circumstances similar to those in the case at bar. In that case, the Second District Court of Appeal likewise grounded its decision on, §901.151(5), Fla. Stat. In neither J.R.H. v. State, supra, nor the instant decision were any federal authorities cited.

Contrary to Petitioner's assertion, Article I, §12 of the Florida Constitution has no application to this case. That Section was amended, effective January 4, 1983, to read as follows:

> SECTION 12. Searches and seizures --The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, and against the unreasonable interception of private communications by any means, shall not be violated. No warrant shall be issued except upon probable cause, supported by affidavit, particularly describing the place or places to be searched, the person or persons, thing or things to be seized, the communication to be intercepted, and the nature of evidence to be obtained. This right shall be construed in conformity with the 4th Amendment to the United States Constitution, as interpreted by the United States Supreme Court. Articles or information obtained in violation of this right shall not be admissible in evidence if such articles or information would be inadmissible under decisions of the United States Supreme Court construing the 4th Amendment to the United States Constitution. (new language underlined).

The Florida Supreme Court held in State v. Lavazzoli, 434 So.2d 321 (Fla. 1983), that this amendment has no retroactive effect. The date of the alleged offense in the case at bar was June 10, 1982. Appendix I. Accordingly, pursuant to State v.

Lavazzoli, supra, the amendment to Article I, §12 of the Florida Constitution, which is relied upon by Petitioner as a basis for this Court's jurisdiction, does not apply.

Moreover, even assuming arguendo that §901.151(5), Fla. Stat. (1981), sets forth parameters of a frisk that are more stringent than those required by Terry v. Ohio, 392 U.S. 1 (1968), there is certainly nothing prohibiting the Florida legislature from doing so. Although it may have enacted this Section in response to this Court's decision in Terry v. Ohio, supra, the legislature did not articulate any intent that the interpretation of the statute be restricted to the standards set forth in that decision. Even if it did, the State of Florida could not seek review in this Court, as it is now attempting to do, solely to obtain an advisory opinion concerning the construction of §901.151(5), Fla. Stat.

Lastly, although the concurring judges in this case cited federal authority as another basis for the result reached, both judges concurred in the decision of the court. Judge Glickstein specifically stated that he concurred with Judge Walden's "well-reasoned opinion" and merely added further comments.

In conclusion, since the decision of the Fourth District Court of Appeal was based solely on state grounds, the petition for writ of certiorari should be denied.

CONCLUSION

The Petition for Writ of Certiorari should be denied because the decision of the Fourth District Court of Appeal was based solely on state grounds.

Respectfully submitted,

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(305) 837-2150

Richard B. Greene
RICHARD B. GREENE
Assistant Public Defender

Robt E. Adler
ROBERT E. ADLER
Assistant Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy hereof has been furnished by courier to JOY B. SHEARER, Assistant Attorney General, Room 204 Elisha Newton Dimick Building, 111 Georgia Avenue, West Palm Beach, FL 33401, this 13th day of December, 1984.

Richard B. Greene
Of Counsel

APPENDIX 1

MCSO 82-437 CF CT. 1

IN THE CIRCUIT COURT for the Nineteenth Circuit of the State of Florida for MARTIN County of the SPRING Term thereof, in the year of our Lord one thousand nine hundred and EIGHTY TWO

THE STATE OF FLORIDA vs. MORGAN JAMISON, JR.	INFORMATION FOR POSSESSION OF A CONTROLLED SUBSTANCE: F.S. 893.13(1)(e) 82-437

IN THE NAME AND BY AUTHORITY OF THE STATE OF FLORIDA:

BE IT REMEMBERED that ROBERT E. STONE, State Attorney for the Nineteenth Judicial Circuit of the State of Florida, prosecuting for the State of Florida, in MARTIN County, under oath, information makes, that MORGAN JAMISON, JR.,

on the 10TH day of JUNE, one thousand nine hundred and EIGHTY TWO in the County of MARTIN and State of Florida did

unlawfully then and there, felontously have in his actual or constructive possession or control, a controlled substance, to wit: METHAQUALONE, commonly known as Quaaludes, in violation of Florida Statute 893.13(1)(e).

CLERK OF CIRCUIT COURT
BY D.C.

JUN 30 P 4:46

; contrary to the form of Statute in such case made and provided, and against the peace and dignity of the State of Florida.

Assistant State Attorney for the Nineteenth Judicial Circuit of Florida, Prosecuting for said State

32

No. _____

IN THE CIRCUIT COURT
Nineteenth Judicial Circuit of Florida
MARTIN County

THE STATE OF FLORIDA
vs.
MORGAN JANISON, JR.

INFORMATION FOR
POSSESSION OF A CONTROLLED SUBSTANCE

Presented by the State Attorney of the Nineteenth Judicial Circuit of the State of Florida and
Filed this _____ day of _____ 19

Clerk of the Circuit Court
By _____ D.C.

ROBERT E. STONE
State Attorney, Nineteenth Judicial Circuit of Florida

WITNESSES FOR THE STATE:

STATE OF FLORIDA
County of MARTIN

Personally appeared before me DAVID C. MORGAN State Attorney for the Nineteenth Judicial Circuit of the State of Florida, who being first duly sworn, says that the allegations as set forth in the foregoing information are based upon facts that have been sworn to as true, by the material witness or witnesses, and which, if true, would constitute the offense therein charged; that the said State Attorney further says that this prosecution was made in good faith.

Assistant State Attorney, Nineteenth Judicial Circuit

Sworn to and subscribed before me this the 30 day of JUNE A. D. 19 82

Notary Public, State of Florida at Large
My Commission Expires May 17, 1983
Bonded by American Fire & Casualty Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the Appendix has been furnished by courier, to JOY B. SHEARER, Assistant Attorney General, Counsel for Appellee, Elisha Newton Dimick Building, Room 204, 111 Georgia Avenue, West Palm Beach, FL 33401, this 13th day of December, 1984.

Richard B. Greene
Of Counsel